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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

15 SUNIL KUMAR, Ph. D., PRAVEEN
16 SINHA, Ph. D.,

17 Plaintiffs,

18 v.

19 DR. JOLENE KOESTER, in her
official capacity as Chancellor of
20 California State University,

21 Defendant.

Case No. 2:22-cv-07550-RGK-MAA

**STIPULATION AND PROPOSED
ORDER TO STAY CASE PENDING
RESOLUTION OF POTENTIALLY
DISPOSITIVE CROSS-MOTIONS
FOR JUDGMENT ON THE
PLEADINGS**

Judge: R. Gary Klausner
Trial Date: October 31, 2023

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8 Attorneys for Defendant
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1 The parties to the above-referenced action, through their respective counsel,
2 ask this Court to stay this action pending decision on the parties' cross-motions for
3 judgment on the pleadings, which will potentially dispose of the entire action. Trial
4 is set for October 31, 2023, and absent a stay, the parties will need to proceed with
5 depositions, expert discovery, and motions for summary judgment. Especially
6 because this case involves a facial challenge to a CSU policy, the parties agree that a
7 stay should be entered pending decision on the cross-motions for judgment on the
8 pleadings.

9 Under Federal Rule of Civil Procedure 26(c)(1), "the court may, for good
10 cause, issue an order to protect a party or person from annoyance, embarrassment,
11 oppression, or undue burden or expense," including whether discovery proceeds by
12 limiting the "time and place or the allocation of expenses, for the disclosure or
13 discovery." In the Ninth Circuit, district courts have broad discretion to stay
14 discovery pending the resolution of a potentially dispositive motion, including a
15 motion for judgment on the pleadings. *Jarvis v. Regan*, 833 F.2d 149, 155 (9th
16 Cir.1987).

17 The Defendant filed a motion for judgment on the pleadings, and asked for
18 complete defense judgment in this action. ECF No. 90. Plaintiffs filed an
19 opposition and a cross-motion for judgment on the pleadings, also asking for
20 complete judgment in this action. ECF No. 91. The cross-motions are fully briefed,
21 and were set for hearing on June 26, 2023. On June 21, 2023, this Court notified the
22 parties that the hearing was taken off calendar, that the motions were taken under
23 submission, and that "the Court will issue a ruling after full consideration of
24 properly submitted pleadings." ECF No. 95.

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1 Meanwhile, a pretrial conference is set for October 16, 2023, and a jury trial
 2 is set for October 31, 2023.¹ The parties thus face a discovery deadline of August 2,
 3 2023 and a motions deadline of August 16, 2023.

4 There is especially good cause to stay this action pending decision on the
 5 cross-motions for judgment on the pleadings. The parties have already exchanged
 6 written discovery, and CSU has produced documents. Absent a stay, however, the
 7 parties will need to proceed with the more intrusive and costly forms of discovery,
 8 including the depositions of Plaintiffs², the deposition of Defendant, additional
 9 depositions of non-parties based on the parties' depositions, and retention of expert
 10 witnesses, preparation of expert reports, and expert discovery, as well as motions for
 11 summary judgment. The parties would need to incur this disruption and expense to
 12 prepare for the October 2023 trial, even though this matter—which mounts a facial
 13 challenge against CSU policy—may prove appropriate for disposition on the
 14 pleadings alone. In such circumstances, “[i]t is sounder practice to determine
 15 whether there is any reasonable likelihood that plaintiffs can construct a claim
 16 before forcing the parties to undergo the expense of discovery.” *Rutman Wine Co.*
 17 *v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987).

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 24 ¹ The initial scheduling conference in this action was held on March 6, 2023 (ECF
 25 81), and this Court set the October 16, 2023 pretrial conference date and the October
 31, 2023 trial date that same day (ECF No. 82).

26 ² One of the Plaintiffs is in India over the summer and thus will be unable to attend
 27 an in-person deposition. Further, arranging a remote deposition will be difficult
 28 given the 12 and half hour time difference with California.

Both parties agree that a stay would be appropriate, and neither party has previously requested a stay. The trial date of October 31, 2023, which was set quite recently (*i.e.*, March 6, 2023 (ECF No. 82)), has not previously been modified. In the event that the matter is not resolved through the pending motions, there will be no prejudice to the parties in resuming discovery, summary judgment, and preparation for trial immediately after this Court issues its Order on the pending motions.

Accordingly, the parties stipulate and respectfully request an Order staying this entire action pending this Court's decision on the pending cross-motions for judgment on the pleadings.

* * *

IT IS SO STIPULATED.

Dated: July 7, 2023

QUARLES & BRADY LLP

By: /s/ Jeff Michalowski

RICHARD A. PAUL

JEFF MICHALOWSKI

MATTHEW W. BURRIS

ADRIELLI FERRER

Attorneys for Defendant Dr. Jolene Koester

Dated: July 7, 2023

FOX ROTHSCHILD LLP

By: /s/ Michael Twersky

MICHAEL TWERSKY

Attorneys for Plaintiffs Sunil Kumar, Ph.D.
and Praveen Sinha, Ph.D.

DECLARATION

I, Jeffrey P. Michalowski, declare as follows:

1. I am a partner in Quarles & Brady LLP, attorneys of record for Defendant in the above-entitled matter, and am licensed to practice before this Court. I have personal knowledge of the following facts and, if called as a witness, could and would testify competently thereto.

REASONS FOR REQUESTED STAY

2. On March 6, 2023, following the Initial Scheduling Conference in this matter, the Court set the following dates: October 31, 2023 – Jury Trial; October 16, 2023 – Pretrial Conference; August 16, 2023 – Motion Cut-Off; August 2, 2023 – Discovery Cut-Off.

3. Defendant filed a motion for judgment on the pleadings, and requested complete defense judgment. ECF No. 90.

4. Plaintiffs filed a cross-motion for judgment on the pleadings, and also asked for complete judgment. ECF No. 91.

5. The cross-motions are fully briefed, and were set for hearing on June 26, 2023.

6. On June 21, 2023, this Court notified the parties that the hearing was taken off calendar, that the motions were taken under submission, and that “the Court will issue a ruling after full consideration of properly submitted pleadings.” ECF No. 95.

7. The parties have already served written discovery, and Defendant has served responses and produced documents.

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1 8. Absent a stay, the parties would need to proceed with additional
2 discovery and litigation pending this Court's decision on the pending cross-motions
3 for judgment on the pleadings.

4 a. Specifically, my client will need to take the depositions of
5 Plaintiffs, retain expert witnesses, prepare expert reports, and prepare and file a
6 motion for summary judgment.

7 b. Additionally, counsel for Plaintiffs has informed me that his
8 client intends to take the deposition of Defendant (i.e., the Chancellor of the
9 California State University system), and additional depositions of non-parties based
10 on the parties' depositions.

11 9. The parties jointly request this stay.

12 10. No party contends that a stay would cause prejudice.

13 **NO PRIOR REQUESTS FOR STAY OR CONTINUANCE**

14 11. The dates at issue in this stipulation and proposed order (*i.e.*, the
15 October 31 jury trial; the October 16, 2023 pretrial conference; the August 16, 2023
16 motion cut-off; and the August 2, 2023 discovery cut-off) were set by the Court in
17 its Scheduling Order of March 6, 2023 (ECF No. 81). None of these dates have
18 been previously stayed or continued, and neither party has requested a stay
19 continuance.

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21 I declare under penalty of perjury under the laws of the United States of
22 America that the foregoing is true and correct.

23 Executed on this 7th date of July, 2023, at San Diego, California.

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25 /s/ Jeff Michalowski
26 Jeffrey P. Michalowski
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SIGNATURE CERTIFICATION

I certify that the content of this document is acceptable to Michael Twersky and that I have obtained authorization to affix his electronic signature to this document.

Dated: July 7, 2023

QUARLES & BRADY LLP

By: /s/ Jeff Michalowski

RICHARD A. PAUL

JEFF MICHALOWSKI

MATTHEW W. BURRIS

ADRIELLI FERRER

Attorneys for Dr. Jolene Koester